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IN THE
Supreme Court of the United States
OCTOBER TERM, 1997

EASTERN ENTERPRISES,
Petitioner,

v.

KENNETH S. APFEL,
COMMISSIONER OF SOCIAL SECURITY, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the First Circuit

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BRIEF OF *AMICUS CURIAE* BITUMINOUS COAL OPERATORS' ASSOCIATION, INC. IN SUPPORT OF RESPONDENTS

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BRIEF OF *AMICUS CURIAE* BITUMINOUS COAL OPERATORS' ASSOCIATION, INC. IN SUPPORT OF RESPONDENTS

The Bituminous Coal Operators' Association, Inc. ("BCOA"), respectfully submits this brief as *amicus curiae* in support of respondents.[1]

INTEREST OF *AMICUS CURIAE*

The BCOA is a multiemployer collective bargaining association that has represented numerous large and small coal companies in negotiations with the United Mine Workers of America ("UMWA") for almost fifty years. Since 1947, the collective bargaining agreements, known as National Bituminous Coal Wage Agreements ("NBCWA's"), have provided for the maintenance of health and pension benefit trust funds for coal production employees.

For decades, BCOA employers have paid the health care costs of their employees and retirees. Until Congress passed the Coal Industry Retiree Health Benefit Act of 1992, Pub. L. No. 102-486, 106 Stat. 2776, 3036 (the "Coal Act" or "Act") (codified at 26 U.S.C. §§ 9701-9722), BCOA employers and other signatories to the NBCWA's also bore, by themselves, the significant, additional cost of financing the health care benefits of over 80,000 retired employees of other coal companies that had abandoned the health care funds, left the coal industry, or gone out of business. In 1991, the employees of other companies, and their dependents, represented 70-

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[1] The parties have consented to the filing of this brief. Copies of the letters of consent have been filed with the Clerk of the Court. This brief was not authored in whole or in part by counsel for a party, and no person or entity, other than the *amicus curiae*, its members, and its counsel made a monetary contribution to the preparation and submission of this brief.

75% of the beneficiaries of the health care funds.[2] By the time the Coal Act was passed, the BCOA and other NBCWA signatories making contributions to the Funds had shrunk from those producing 80% of the nation's coal in 1950 to those producing only 30% of the nation's coal in 1990, and the cost of financing the health benefits for other companies' employees had grown enormously. Joint Appendix ("JA") 246a.

After considering the findings of an Executive Branch Commission and conducting hearings, Congress and the Executive Branch reached a bipartisan solution to the coal miners' health fund crisis. The legislation places the cost of financing health benefits on the present and former NBCWA signatory employers for whom the beneficiaries worked. This case challenges the constitutionality of assessing liability on a company to finance the health benefits of its former employees.

The current BCOA member companies always have accepted responsibility for the funding of health care plans for their current and former employees. If the Coal Act is struck down, however, a new crisis will be precipitated. The effect on the industry of a new round of abandonment of retirees by their former employers cannot be overstated; the entire system for funding promised health care for retired miners will be placed in jeopardy, and the stability of coal production and employment will be at risk.

Moreover, until the passage of the Coal Act, the BCOA was a settlor of the miners' health care funds, and the BCOA participated in selecting the trustees of the funds. Under the Coal Act, the BCOA participates in selecting trustees for the benefit funds created by the Act, and is a settlor for one of those funds. 26 U.S.C. §§ 9701(b)(2), 9702(b), 9712(a)(1).

Accordingly, the BCOA has a direct and substantial interest in the case before the Court.

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[2] GAO, "Retired Coal Miners' Health Benefits," GAO/HRD-92-130FS at 8-9 (July 22, 1992) ("GAO Report").

INTRODUCTION AND SUMMARY OF ARGUMENT

The Coal Act is based on a simple principle—"pay-for-your-own." The *only* issue presented by this case is the obligation of a former coal employer to contribute to the health care costs of its retired employees (and their survivors and dependents). Although the Coal Act includes a contingent obligation, after other funding sources have been exhausted, to contribute to the health care costs of employees whose former employers no longer exist (and although amicus is confident of the constitutionality of that provision as well), that contingent obligation never has been triggered, and is not ripe for review. Even more specifically, moreover, in this company-specific substantive due process and takings challenge, the only issue is the obligation imposed on petitioner Eastern Enterprises ("Eastern"), under the "pay-for-your-own" principle, to pay for its own former employees.

At bottom, Eastern's position is that it has constitutional immunity from any requirement that it contribute to the health care costs of its former employees, and that it has a constitutional right to have *others* shoulder the health care costs for its former employees—either the remaining BCOA employers, who always have paid for their own and continue to do so; or other coal employers, who never reaped the benefits of the labor of Eastern's employees; or the miners and their families themselves, almost fifty years after they first received health care benefits in a historic agreement.

The Executive Branch and the Legislative Branch reached a different conclusion, however, about the allocation of responsibility for Eastern's former employees—a conclusion that is, at a minimum, rational and constitutionally permissible. Eastern contends that it has a constitutional shield protecting it from an obligation to "pay-for-its-own"—and that the Judicial Branch should override the considered judgment of the Executive Branch and the Legislative Branch on this matter of complex economic regulation. Indeed, petitioner rests its entire plea

to this Court—as it must—on the anomalous proposition that this Court should find that a blue-ribbon Executive Branch Commission, Congress, and the Executive Branch were mistaken in their factual analysis of the crisis in the coal industry and of the promised health benefits. Neither substantive due process nor the Takings Clause, however, compels this bizarre result, and petitioner's challenge falls far short of establishing that the Judiciary should invalidate this important legislation.

First, Congress and the Executive Branch faced a severe problem in the coal industry in the early 1990's. After careful reflection and extensive consideration of evidence, they reached the conclusion reflected in the Coal Act—namely, that "pay-for-your-own" is a reasonable, fair, and appropriate response to the dire situation of retired coal industry employees and their families. This conclusion is, at the very least, rational and well within the bounds of permissible governmental options.

Second, in any event, petitioner is particularly ill-suited to be raising claims of unconstitutional irrationality or unfairness. Petitioner continued to reap lucrative benefits from its wholly-owned BCOA subsidiary well into the 1980's, and actively participated in the conduct of its affairs. Indeed, petitioner's own senior corporate officers *simultaneously* served as President of petitioner's subsidiary during much of the 1970's and 1980's, at the very time that petitioner's subsidiary participated in the BCOA and ratified the NBCWA's in the 1970's and 1980's for which petitioner repeatedly emphasizes that it bears no responsibility. Petitioner's attempted self-characterization as a company that left the scene decades ago (which would not in any event suffice to establish unconstitutionality) thus is simply contrary to fact.

In the final analysis, Congress and the Executive Branch adopted a simple principle of "pay-for-your-own." Eastern's position that it has a constitutional entitlement to have others pay for its own has no basis in the Constitution.

ARGUMENT

I. CONGRESS' REQUIREMENT THAT COAL COMPANIES PAY FOR THEIR OWN IS RATIONAL AND PERMISSIBLE

In the early 1990's, the federal government faced a crisis in the coal mining industry. The former employers of many retired coal miners (who had been receiving health care benefits for over four decades) had stopped contributing to the health care programs; the enormous cost of the retirees' health care was thrown on to a dwindling number of BCOA and other NBCWA signatory employers; the solvency of the historic miners' health care system was in jeopardy; and disruption of the coal industry, threatening the U.S. economy, loomed. A broad-based Executive Branch Commission determined that affected employees had been given a promise of lifetime benefits and suggested possible statutory alternatives to address the financial crisis; Congress and the Executive Branch ultimately enacted the "pay-for-your-own" approach of the Coal Act. This governmental response was rational and permissible, and neither substantive due process nor the Takings Clause compels its judicial invalidation.

First, contrary to petitioner's contention, the Coal Commission, Congress, and the Executive Branch acted fairly and reasonably in responding to the financial crisis in the coal miners' health care plans. Second, also contrary to petitioner's contention, neither substantive due process nor the Takings Clause supports judicial invalidation of the Coal Act.

A. The Federal Government Responded To A Crisis In The Coal Industry Health Care Plans

At the time the Coal Act was passed, the federal government was faced with a crisis that threatened to reverberate throughout the coal industry and the American economy. The health benefit trust funds that had provided retired UMWA miners with health care coverage for over forty years were on the brink of bankruptcy. Over 120,000 retired miners, widows, and survivors de-

pended on the trust funds for coverage, and the funds' looming insolvency threatened severe disruptions in the coal industry. JA 247a, 289a, 292a-293a.

The federal government addressed this serious problem, first, through an Executive Branch Commission and then, through Congressional and Executive Branch consideration of governmental options. This process ultimately led to adoption of the "pay-for-your-own" principle in the Coal Act. The activities and analysis of the Coal Commission, and of Congress and the Executive Branch, highlight the fairness and reasonableness of the "pay-for-your-own" principle. Congress and the Executive Branch permissibly determined that requiring former employers to contribute to the health care costs of their own former employees was an appropriate response to the miner health care crisis.

1. The Coal Commission—The Executive Branch's Coal Commission was appointed in 1990; it comprehensively considered the rapidly deteriorating situation in retired coal miners' health care funds.

The funds' precarious financial situation had become pronounced in the late 1980's. By 1988, surplus funds had been exhausted and the trust funds began to run a deficit. The growing tension in the coal industry over the financial plight of the health benefit trust funds crystallized during a ten-month long strike against the Pittston Coal Company in 1989. During negotiations concerning the 1988 NBCWA, Pittston had told the UMWA that the company no longer intended to contribute to the trust funds and terminated benefits to 1700 retirees for whom Pittston directly paid health care benefits. *Coal Commission Report on Health Benefits Of Retired Coal Miners: Hearing Before the Subcomm. On Medicare and Long-Term Care of the Senate Finance Comm.*, 102d Cong., 40 (1991) (hereinafter "*Senate Finance Committee Hearing*"). "The payment of health care benefits to retired and disabled miners . . . was a major issue in the strike." JA 247a (Coal Commission Report). The Pittston strike

"threatened the stability of coal production as well as the economies of coal-producing states." *Davon Inc. v. Shalala*, 75 F.3d 1114, 1118 (7th Cir.), *cert. denied*, 117 S. Ct. 50 (1996); *see also, e.g.*, 135 Cong. Rec. S12312 (daily ed. Oct. 2, 1989).

Secretary of Labor Elizabeth Dole became involved in settling the strike. In the wake of the settlement, in March 1990, she appointed a blue-ribbon, expert panel to consider this growing problem—the Advisory Commission on United Mine Workers of America Retiree Health Benefits ("the Coal Commission"). Secretary Dole charged the Commission with analyzing and making recommendations concerning the "financial crisis" of coal miners' health care plans and the effect of these issues on the coal industry as a whole. *Senate Finance Committee Hearing* at 257 (App. 7 to Coal Commission Report).

The 11-member Coal Commission was broadly based. Its members reflected "a wide range of experience," and "represent[ed] all facets of the coal industry." JA 249a. Coal Commission members were drawn from "[t]he union"; "coal operators—both BCOA and non-BCOA"; the "private insurance industry"; "academics"; "medical and government policy experts"; and "those with extensive experience in labor law, mediation, and labor negotiations." *Id.* Its Chairman was respected federal mediator and former Secretary of Labor William Usery, and its Vice Chairman was Villanova Law Professor Henry Perritt.

The Commission sought broad public input. It held six public meetings, which were announced in advance in the Federal Register, at which members of the public were invited to offer their views. Indeed, the Commission heard the testimony of eighteen witnesses and received written statements from an additional twenty-nine individuals and organizations, representing the full spectrum of the coal industry. In November 1990, the Commission issued its report, documenting the financial crisis of the benefits trusts, explaining the factors that had led

to the financial instability, and recommending solutions to the problem. JA 231a; *Senate Finance Committee Hearing* at 269 (App. 8 to Coal Commission Report).

a. The Commission's Analysis and Recommendations—In summarizing its findings, the Commission succinctly stated, "the combination of skyrocketing health care costs, an increasing number of retirees who have been abandoned by their employers, and a smaller percentage of coal producers making contributions to the UMWA Funds have put the health care program for retirees in a financial crisis." JA 236a. By 1993, the Commission emphasized, the Funds would face a deficit of $300 million. *Id.*

The Coal Commission recognized that the financial crisis was the result of a "convergence of numerous forces both in the coal industry and in health care." JA 287a. The Commission stressed that a dwindling number of companies was being called on to support the health benefits of so-called "orphan" employees, whose former employers were not contributors to the health care funds. NBCWA signatory employers, in contrast—such as the members of the BCOA—paid for their own. As the Commission explained:

> How to continue to provide health benefits to 'orphans' is the essence of the problem. Signatory coal operators who are still in the coal business are willing to pay the fair cost of their retirees, but are increasingly unwilling to shoulder the burden of paying for orphans, which they view as an industry-wide problem.

JA 236a.

The Commission particularly emphasized its finding that retired coal miners and their families had been given a reasonable expectation of lifetime benefits:

> Retired coal miners have legitimate expectations of health care benefits for life; *that was the promise they received during their working lives, and that is how they planned their retirement years.* That commitment should be honored. But today those expectations and commitments are in jeopardy.

JA 245a-246a (emphasis added).

The Commission also explained that "[h]ealth care benefits are an emotional subject in the coal industry, not only because coal miners have been promised and guaranteed health care benefits for life, but also because coal miners in their labor contracts have traded lower pensions over the years for better health care benefits," which now were in jeopardy. JA 236a. The Commission also observed that coal operators and the miners entered "a concordat . . . that the Fund would move forward and the operators would be able to mechanize their mines." JA 265a.

The Commission explained that it had reached consensus "on a number of important issues." *First*, and perhaps most importantly, "[t]he Commission *firmly* believes that the retired miners are entitled to the health care benefits that were promised and guaranteed them and that such commitments must be honored." JA 237a. (emphasis added). *Second*, "[t]he Commission agrees that a statutory obligation to contribute to the plans should be imposed on current and former signatories to the National Bituminous Coal Wage Agreement." *Id.* *Third*, "[t]he Commission agrees that mechanisms must be enacted to prevent future dumping of retiree health care obligations on the Funds." *Id.* The Commission noted that it had disagreement on one "principal substantive point"—whether the obligation to pay for abandoned employees should be spread to all coal mining companies (including, not only the companies that had stopped paying for employees, but also those who never had been signatories to union agreements at all), or whether it should be imposed simply on the former em-

ployers for their own employees. Accordingly, the Commission recommended both approaches as alternatives.[3]

b. The Background Of The Financial Crisis—The Commission also analyzed the background of the 1990's coal health care funding crisis. It explained that the history could be grouped in five stages: (1) the establishment period (1946-50); (2) the development period (1950-60); (3) the retrenchment period (the 1960's); (4) the transition period (the 1970's); and (5) the "period of crisis" (the 1980's-90's). Four factors had been present in each period: the collective bargaining process; government involvement; health care delivery; and industry developments. JA 259a-260a.

(i) *The Establishment Period*—As the Commission explained, the coal miners' health care plans were created in 1946. After a bitter coal strike, President Truman seized the mines under the authority of the War Labor Disputes Act, 11 Fed. Reg. 5593 (1946), and, after negotiations between Secretary of the Interior Julius Krug and UMWA President John L. Lewis, an agreement was reached that established a miners' health care benefit system. In 1947, as the federal government's one-year control of the mines was reaching its end, the BCOA and the UMWA signed the 1947 NBCWA, in which the signatories agreed to transfer the health care funds into a single trust known as the 1947 UMWA Welfare and Retirement Fund. Recurrent labor unrest over implementation of the 1947 Fund ensued, however, and various government representatives sought to help resolve the difficulties. JA 261a-264a.

[3] One of the Coal Commission's alternatives simply applied to past signatories. JA 312a, 313a ("this plan seeks additional revenues from a broadened base of current and past signatories to the contracts, establishing and providing revenues for the Benefit Funds"; "[l]egislation will be enacted requiring past signatories to contribute to Benefit Funds on an equitable basis."). The industry-wide alternative, in contrast, consisted of: (1) an industry-wide orphan fee, and (2) contributions from signatories to the current NBCWA or the 1978, 1981 and 1984 NBCWA's for their former employees. JA 307a. Contrary to petitioner's suggestion, one Coal Commission alternative thus applied to past signatories without limitation. Even if it did not, moreover, the Commission's factual analysis of the historical situation and circumstances supports a rational basis for the "pay-for-your-own" approach later adopted by Congress. *See* pp. 11-18, *infra*.

(ii) *The Development Period*—The difficulties in the late 1940's were resolved by the 1950 NBCWA, in which the BCOA and the UMWA agreed to create the UMWA Welfare and Retirement Fund of 1950 ("1950 Fund"); that fund succeeded to the assets and liabilities of the 1947 Fund. As the Commission found, the 1950 agreement had two important underpinnings—(1) the Fund would be permitted to continue with its mission of providing health care to miners and their families, and (2) the coal mining industry, in turn, would be permitted to mechanize and modernize. JA 265a.

(iii) *The Retrenchment Period*—Financial difficulties caused the Fund to make adjustments in the 1960's. JA 267a-268a.

(iv) *The Transition Period*—During the 1970's, the Commission explained, several developments produced changes in the operation of the Fund. *First*, the number of employers contributing to the Fund declined; various companies left the NBCWA process for various reasons, and mines in the western United States grew in importance, operating outside the NBCWA system. *Second*, as miners who had labored under the NBCWA system aged and retired, the costs grew. *Third*, significant legal changes developed. Congress enacted the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. §§ 1001-1461, which required restructuring the health and benefit plans into separate funds for health and for pension benefits; a judicial decision, moreover, imposed the unanticipated addition of 19,000 retired miners and thousands of their dependents to the Fund. When an attempt was made to reduce medical benefits, labor unrest again

swept the industry. As the Commission concluded, severe pressures and tensions thus began to emerge in the funding of coal mining health care plans. JA 269a-271a.

The 1978 NBCWA accordingly reflected this evolution. The multiemployer 1950 Benefit Plan and Trust would continue to pay for employees who had retired prior to January 1, 1976. The multiemployer 1974 Benefit Plan and Trust would pay for workers who had retired on or after January 1, 1976, but whose employers no longer contributed. JA 269a. If the post-1975 retiree's employer was an existing NBCWA employer (such as a BCOA member), the employer would provide for its retirees through an individual company plan, rather than, as in the past, through a multiemployer fund. JA 271a.

The 1978 bargaining agreement included a so-called "guarantee clause" and an "evergreen clause." Under the "guarantee clause," the signatory employers "agree[d] to fully guarantee the pension and health benefits provided by the" 1950 and 1974 benefit trusts "during the term of this agreement." *See, e.g.*, RA 787-88, 827-28.[4] In order to fully fund the benefits, the "evergreen clause" required employers whose employees participated in the benefit plans to "mak[e] the contributions required under the [current] National Bituminous Coal Wage Agreement . . . as amended from time to time, and any successor agreements thereto." *See UMWA 1974 Pension Trust v. Pittston Co.*, 984 F.2d 469, 471-72 n.1 (D.C. Cir. 1993). These clauses were retained in substantially the same language in subsequent agreements. JA 111a; RA 787-88, 827-28.

(v) *Period of Crisis*—A crisis developed during the 1980's—what the Commission termed "a struggle for Fund survival." JA 272a. NBCWA tonnage declined dramatically as companies chose not to sign the NBCWA;

[4] Citations to "RA" refer to the Joint Appendix submitted to the Court of Appeals, which has been lodged with the Court.

medical costs soared astronomically; and judicial decisions continued to add thousands of miners to the fund. As the Commission found, NBCWA employers (including the BCOA) were faced with the prospect of what the Commission termed a "last man's club"—a tremendous economic incentive to abandon the fund (and one's own former employees), lest one be left "holding the bag" with enormous unfunded liabilities for *other* companies' employees. The 1984 and 1988 NBCWA Agreements could not resolve these basic structural deficiencies. Additional companies, moreover, failed to renew their participation in the NBCWA system after the expiration of each contract. Accordingly, the Commission concluded, the government faced the very real prospect of the bankruptcy and abandonment of the funds—a development that would have profound consequences for the miners and their families, as well as the nation as a whole. As the Vice Chairman of the Commission stated, "[w]hen the present system falls apart there will be instability, not only in the organized part of the industry but in the coal industry generally," JA 322a; as the Commission emphasized, moreover, coal remains a "cornerstone of our national energy supply." JA 253a.

After a careful consideration of almost five decades of coal mining health care plans, the Secretary of Labor's expert Commission thus reached several critical conclusions: First, NBCWA coal miners and their families had legitimate expectations of lifetime health care benefits. Second, the NBCWA health care funds were threatened with financial disaster. Third, the disaster had been caused by a situation in which numerous former NBCWA signatories no longer contributed, thus leaving an enormous burden on the plan as a whole and on those employers who were willing to pay for their own, but unwilling to shoulder alone the burden of other companies' former employees. And fourth, a federal governmental solution was appropriate and imperative. JA 236a-237a. The Coal Commission's report and findings themselves thus establish a fair and reasonable basis for a "pay-for-your-

own" approach, even though that was not the only statutory alternative suggested by the Commission and even though such a report and findings plainly are not a constitutional prerequisite for the validity of legislation. *FCC v. Beach Communications, Inc.*, 508 U.S. 307, 314-315 (1993).

2. Congress And The Executive Branch—In the wake of the Coal Commission's report, Congress and the Executive Branch undertook their own thorough consideration of the ongoing crisis in coal health care plan financing. Ultimately, they reasonably agreed to the "pay-for-your-own" solution reflected in the Coal Act.

Congress first conducted hearings to consider the Commission's findings and recommendations. The Senate Finance Committee heard testimony from a wide variety of interested persons—various Coal Commission members; individual miners and their dependents; coal companies that were no longer NBCWA signatories; coal companies that never had been NBCWA signatories; representatives of the BCOA; the President of the mine workers' union; and experts from academia. Individual beneficiaries testified about the importance of their expectations of health care benefits. Analysts testified that coal companies that no longer contributed to health care benefits for former employees had contributed to the problem by producing expectations and then refraining from contributing. Others opposed this view. Some recommended an industry-wide tax; some recommended a "pay-for-your-own" approach; some recommended neither. Congress thus had an opportunity to consider the views of all interested persons concerning the causes and problems of the health care plan crisis, and possible responses to it. *See Senate Finance Committee Hearing* at 4-7, 9-20, 23-30, 39-42, 43-45, 46, 325-26.

The need for congressional action was made apparent to Congress during the hearings. The health care funds had a projected 1993 deficit of $300 million. Although

the BCOA and other NBCWA employers were paying for their own former employees, they could not sustain the cost of signing a new collective bargaining agreement in 1993 (when the 1988 NBCWA expired) that placed the expense of other companies' employees on their shoulders.[5] Over 120,000 elderly beneficiaries would be left without benefits that they expected and had relied upon[6]; and there would be extreme labor unrest, threatening the national economy, if the medical program unraveled.[7]

An initial legislative response was ultimately unsuccessful. In March 1992, Congress passed legislation that generally would have imposed an industry-wide, per-hour tax on bituminous coal production to fund health care benefits for retired orphan miners. Opponents of the bill argued that it inappropriately placed responsibility on companies that never had been part of the NBCWA process. Senator Wallop, for instance, vigorously objected that "companies that did nothing to create this problem are being asked to foot the bill for [companies that did]," and that "those who had nothing to do with it are now forced to pay." 138 Cong. Rec. S3433, S3435 (daily ed. Mar. 12, 1992). Senator Boren emphasized, moreover, that it was not the miners themselves, who were responsible for the funding crisis: the "retired workers . . . are the innocent victims of the process that was established." *Id.* at S3434. The Bush Administration also expressed its opposition to an industry-wide tax approach. *See* 138 Cong. Rec. S17633 (daily ed. Oct. 8, 1992) (Sen. Rockefeller).

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[5] *Senate Finance Committee Hearing* at 19 (Henry H. Perritt, Jr., Vice Chairman of the Coal Commission); *id.* at 45 (Michael K. Reilly, Chairman, BCOA); *see also* 138 Cong. Rec. S3441 (daily ed. Mar. 12, 1992) (Sen. Rockefeller).

[6] *Senate Finance Committee Hearing* at 4-5 (Dixie Woolum); *id.* at 5-6 (Homer Eckley); *id.* at 47-48 (Richard L. Trumka, President, UMWA); *see also* 138 Cong. Rec. S10784 (daily ed. July 29, 1992) (Sen. Specter).

[7] 138 Cong. Rec. S3645 (daily ed. March 13, 1992) (Sen. Ford).

Ultimately, the legislation, which was part of a larger tax bill, was vetoed when the larger tax bill was vetoed.

Throughout the spring of 1992, the Senate continued to consider the issue. Senators requested a report from the General Accounting Office that analyzed various factors relating to proposed legislation regarding financing health benefits for retired coal miners. The GAO Report carefully documented the continuing and accelerating crisis in the health care funds. GAO Report at 19-31.

In the summer of 1992, Congress and the Executive Branch reached agreement on the "pay-for-your-own" proposal reflected in the Coal Act. Senator Rockefeller explained that, "[i]nstead of including a broad industrywide tax, the basic funding mechanism of this legislation generally requires premium payments from those for whom the retirees worked. These are the responsible companies. [Under this legislation they] would pay for their own retirees." 138 Cong. Rec. S10783 (daily ed. July 29, 1992). Senator Wallop agreed, stating "that the resolution . . . is as fair as we could possibly make it." *Id.* at S10784. Senator Byrd likewise emphasized that the Coal Act requires retired miners' benefits to be provided by "those companies that are now or formerly were signatories to a [NBCWA]. It is these companies that made the promise of health benefits to their workers, and it is appropriate that these companies be collectively asked to provide these benefits." *Id.* Senator Ford, who had opposed the earlier legislation, now expressed his support and emphasized that, unlike the previous legislation, "the funding mechanism for paying for these benefits [does] not include a new tax on coal companies that were never a part of this problem." *Id.* at S10785. The Executive Branch, which had opposed the earlier legislation, supported the "pay-for-your-own" approach. *Id.* at S10783.

The legislative discussion of the statutory alternatives particularly emphasized five central points. First, the Act was necessary to prevent severe hardship to individual

miners and their families.[8] Second, the Act was necessary to prevent tremendous upheaval in the coal industry, and the national economy generally, when the NBCWA expired in early 1993.[9] Third, simply leaving the payment obligation on the BCOA and NBCWA employers, without further action, was unfair and impracticable, both because the funding base was too limited, and because these employers themselves could abandon the funds, as others had done, and severely worsen the "last man's club" phenomenon.[10] Fourth, as the Coal Commission had

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[8] *See, e.g.*, 138 Cong. Rec. S10784 (daily ed. July 29, 1992) (Sen. Specter) (referring to "the tremendous anguish of the retirees from the coal industry" and "the kinds of problems that they were sustaining"; "It is especially tragic because they had expected to have benefits to have protected them from the ravages of aging, and the ravages of the need for medical care"); *id.* at 10785 (Sen. Ford) (legislation ensures that the beneficiaries "d[o] not lose their much needed health care benefits, nor have them interrupted"); *id.* at S10787 (Sen. Simon); *id.* at S3436 (daily ed. March 12, 1992) (Sen. Rockefeller) (miners "have sacrificed their lungs, their limbs, their lives, their health, in doing what is the most dangerous work under God's Earth"); 138 Cong. Rec. H11413 (daily ed. Oct. 5, 1992) (Rep. Rahall).

[9] *See, e.g.*, 138 Cong. Rec. S3585 (daily ed. March 13, 1992) (Sen. Byrd) (cutoff of benefits could lead to "widespread labor unrest . . . in the Nation's coal fields," with millions of dollars in losses and a "recipe for disaster" that could send the economy into "a further downward spiral").

[10] *See, e.g.*, 138 Cong. Rec. S3440 (daily ed. March 12, 1992) (Sen. Rockefeller) ("the BCOA and the . . . companies that it represents is not only paying for all of its own retirees, which represent 25 percent of the 120,000 [beneficiaries], but it is paying for all of the rest of them too . . . . Well, the BCOA has been paying for them because of the contract, but, guess what? The contract ends next February 1, 1993, and that is going to be the end of that arrangement. They are not going to make that agreement anymore, because they do not have to sign it, and they will not. . . . The BCOA will take care of its own people. That will be 25 percent of all of these retirees. But what about all the rest of them? They are going to be nowhere, out in the street, no help. That is the point. That is why this is a crisis."); *id.* at S3441 (Sen. Rockefeller) (BCOA employers "have been paying $1 for

found, miners and their families had received promises of lifetime health care benefits (and the companies they worked for had benefited from the miners' labor and the health care program).[11] And, fifth, the "pay-for-your-own" principle was an appropriate response to this serious problem.[12]

The Senate passed the legislation on July 30, 1992, as part of the Energy Policy Act of 1992; the Conference Committee agreed to the Senate language; the House agreed to final passage of the conference bill on October 5, and the Senate agreed on October 8, 1992; and President Bush signed the legislation on October 24, 1992.

The Coal Act represents a fair and reasonable response to the crisis in coal miners' health care funds. As Senator Rockefeller explained, "[t]he shrinking funding base and spiraling costs ma[d]e the continuation of the old program unworkable. The legislative task has been to assign responsibility for funding in the best way possible, realizing that there is no perfect solution. . . . [The Act] is within the scope of the basic alternatives recommended by the Dole Commission." 138 Cong. Rec. S17633 (daily ed. Oct. 8, 1992).

The new funding obligations apply only to miners who retired before September 30, 1994. As Senator Ford stated, "[w]e have closed the new orphan fund . . . to

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their own retirees and $3 for everybody else's. Ordinarily, in business one does not do that for a very long time."); *id.* at S3645 (Sen. Ford) ("this is a burden that the remaining signatory companies can no longer bear").

[11] *See, e.g.*, 138 Cong. Rec. S10782 (daily ed. July 29, 1992) (Sen. Rockefeller) ("Everyone acknowledges that these elderly people deserve their health care coverage. . . . As former Secretary of Labor Dole's Coal Commission said very simply, the commitment to health care benefits should be honored."); *id.* at S10783 (Sen. Rockefeller); *id.* at S10785 (Sen. Wofford); *id.* at S10783 (Sen. Byrd).

[12] *See, e.g.*, 138 Cong. Rec. S10782-10785 (daily ed. July 29, 1992) (Statements of Sens. Rockefeller, Byrd, Wallop, Specter, and Ford); *see also* pages 15-17, *supra*.

limit the problem and ensure a long-term solution." 138 Cong. Rec. S10785 (daily ed. July 29, 1992).[13]

With regard to health care plan miners who retired before September 30, 1994, and whose employers are still in business, the Act adopts a three-step approach. *First*, liability is assigned to a former employer who was a signatory to a 1978 NBCWA or later NBCWA *and* was the most recent to employ the employee for at least two years. *Second*, if there is no employer in the first category, liability is assigned to a former employer who was a signatory to a 1978 NBCWA or later NBCWA *and* was the most recent to employ the employee. *Third*, if there is no employer in the first or second category, liability is assigned to the former employer who employed the miner for the longest period of time. 26 U.S.C. §§ 9706(a)(1)-(3). Thus, the Act imposes liability on pre-1978 employers only if no other employer is available to contribute.

With regard to health care plan miners who retired before September 30, 1994, and whose employers are no longer in business at all, the Act likewise establishes a tiered approach. It transfers $210 million from the miners' pension fund, which had been created by contributions from BCOA members and NBCWA signatories, to support these beneficiaries and pay related costs; it likewise transfers millions of dollars from the interest on the abandoned minelands fund to support these abandoned employees. 26 U.S.C. § 9705. If those funding sources fall short, proportionate liability will be imposed on all contributors to the fund. No such liability ever has been imposed.[14]

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[13] The Coal Act created two new trust funds to provide health care benefits to retired miners and their dependents. The Combined Fund merged the 1950 and 1974 Benefits Trusts to provide benefits to coal industry retirees who were eligible as of July 20, 1992, to receive and were receiving benefits from the 1950 Benefit Trust or the 1974 Benefit Trust. The UMWA 1992 Benefit Plan, in turn, services eligible employees who retired between July 20, 1992 and September 30, 1994, and whose last signatory employer is not providing them with health benefits.

[14] See RA 1906-1907; Pet. Br. at 15-16 n.32. As a result of the "pay-for-your-own" principle in the Coal Act, the class of "orphans"

With the coal miners' health care funds on the brink of financial disaster—threatening to deny miners and their families promised health care and threatening to engulf a critical national industry in turmoil and upheaval—Congress and the Executive Branch thus fashioned a governmental solution based on a principle of "pay-for-your-own"; liability was imposed on a universe of companies that, in the government's considered view, bore a significant relationship to the medical benefit program and the financial crisis confronted by Congress, the Executive Branch, and the country. This governmental response to a complex economic problem was fair and reasonable, and well within the government's permissible discretion.

B. The Solution Crafted By Congress And The Executive Branch Does Not Violate Substantive Due Process Or The Takings Clause

It is well-settled that this Court will invalidate an Act of Congress only for "the most compelling constitutional reasons." *Mistretta v. United States*, 488 U.S. 361, 384 (1989) (internal quotation marks omitted). Petitioner's challenge falls far short of establishing such a basis for invalidating the Coal Act.

1. Substantive Due Process Does Not Require Invalidating The Coal Act—The Coal Act allocates economic rights and responsibilities between employers and employees in the coal industry. This Court repeatedly has emphasized that "legislative Acts adjusting the burdens and benefits of economic life come to the Court with a presumption of constitutionality," and that "the burden is on one complaining of a due process violation to establish that the legislature has acted in an arbitrary and irrational way." *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 15 (1976); *see Concrete Pipe & Products v. Construction Laborers Pension Trust*, 508 U.S. 602, 637

—former employees without a contributing employer—is dramatically smaller than the "orphan" class considered by the Coal Commission.

(1993); *Pension Benefit Guar. Corp. v. R.A. Gray & Co.*, 467 U.S. 717, 729 (1984). Under this deferential standard, a rational statutory scheme will survive judicial review even if the court believes that an alternative scheme would have been wiser. *R.A. Gray & Co.*, 467 U.S. at 729.

Congress' enactment of legislation that applies retroactively is viewed with the same "strong deference accorded [prospective] legislation in the field of national economic policy." *R.A. Gray & Co.*, 467 U.S. at 729. "[J]udgments about the wisdom of such legislation remain within the exclusive province of the legislative and executive branches." *Id.* Congress thus may enact legislation that "attaches new legal consequences to events completed before its enactment," *Landgraf v. USI Film Prods.*, 511 U.S. 244, 270 (1994), or "upsets otherwise settled expectations," *Usery*, 428 U.S. at 16, so long as "the retroactive application of the legislation is itself justified by a rational legislative purpose." *R.A. Gray & Co.*, 467 U.S. at 730; *General Motors Corp. v. Romein*, 503 U.S. 181, 191 (1992).

Contrary to petitioner's substantive due process contention, it is clear that Congress acted with a rational legislative purpose. Congress recognized that the financial crisis in the retired miners' health care funds threatened the coal industry and the nation's economy. *See* Pub. L. 102-486, § 19142(a), 106 Stat. 2776, 3037 (1992). Congress' express aim in enacting the Coal Act was "to remedy problems with the provision and funding of health care benefits with respect to the beneficiaries of multiemployer benefit plans that provide health care benefits to retirees in the coal industry." *Id.* § 19142(b)(1). Both Congress and the Coal Commission found that coal miners had a reasonable expectation of health care benefits for life; that companies who had participated in the NBCWA process benefited from the miners' labor and labor peace; that companies whose former employees were beneficiaries were not contributing to the health benefit funds;

and that the dwindling funding base placed the employers' former employees at considerable risk. Congress' and the Executive Branch's decision that the retirees' former employers should bear some responsibility for health plan liabilities—and "pay-for-their-own"—stems from these determinations.

Petitioner's argument, moreover, rests on the proposition that Congress, the Executive Branch, and the Coal Commission simply were wrong in their factual analysis of the promise that had been made to miners and the health care fund crisis—and that this Court should invalidate important legislation on that basis. Pet. Br. at 21, 27-28. But, as demonstrated above, Congress and the Executive Branch carefully considered the situation and acted reasonably in analyzing the problem. Thus, "pay-for-your own" has a rational basis. Indeed, for these reasons, six Courts of Appeals have recognized the rationality of the Coal Act. Pet. App. A-2 (collecting cases). It would be a radical expansion of substantive due process if it immunized employers from paying for benefits owed their own employees when the benefits at issue arose from the employment relationship.[15]

The approach adopted by Congress, moreover, is at least as fair and reasonable as other alternatives.[16] As Sen-

[15] Petitioner extensively discusses the various NBCWA's that it signed, suggesting that those agreements define the limits of any responsibility that it may have to its former employees. The fact that petitioner may have fulfilled its contractual obligations is not an impermeable shield, however, against congressional action to address a problem that petitioner helped create. "Contracts, however express, cannot fetter the constitutional authority of Congress." *Connolly v. Pension Benefit Guar. Corp.*, 475 U.S. 211, 223-24 (1986) (citation omitted). Congress was aware that the collective bargaining system would not be sufficient to solve the problem, *i.e.*, forty years of NBCWA's were insufficient to protect the health care that had been promised to miners.

[16] Congress, of course, is under no obligation to adopt what a court deems the fairest approach. *See Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 19 (1976) ("whether a broader cost-spreading scheme would have been wiser or more practical under the circumstances is not a question of constitutional dimension").

ator Wallop and other opponents of an industry-wide approach emphasized, many western and non-union coal operators never had anything to do with the multiemployer health benefit funds; it is far from self-evident that an industry-wide approach, while also defensible, is more fair or appropriate than "pay-for-your-own." Indeed, Senator Wallop and others argued it would be less fair.

Nor would it be fair (or practicable) to throw the burden onto the BCOA and those remaining in what the Coal Commission vividly called the "last man's club." The BCOA members and other signatories, who were shouldering the entire burden until the passage of the Coal Act, were wiling to pay for their *own* former employees, but had never employed most of the retirees who were eligible for health benefits from the funds. Petitioner suggests that the BCOA members (and other NBCWA signatories) should bear the cost of paying for Eastern's own former employees because, in petitioner's rendition, Eastern did not "cause" the problem and is not at fault. BCOA members, however, certainly did not "cause" the problem and certainly are not at fault. Indeed, BCOA members have shouldered the burden of paying health benefits for retirees whose employers walked away after enrolling their workers in the funds. The BCOA members, in contrast, did not expand the orphan class. Throughout the history of the funds, the BCOA members fully met their obligations. Petitioner implies that, because it purportedly broke no laws by stopping to contribute to the funds, it is unconstitutional to require petitioner to pay for those who worked for it. But, the BCOA members likewise could have abandoned the NBCWA system and stopped paying when the contract expired in 1993, and might well have been forced to do so by the ongoing financial crisis in the health care plans. This prospect is what Congress faced,

and it was reasonable for Congress to conclude that it would be unfair to single out the BCOA and other current signatories to bear the entire burden of continuing the program. Further, it would have been rational to determine that spreading the costs among a more limited group of companies, such as the BCOA and other current signatories, would not offer substantial financial relief in terms of either reducing the number of orphan beneficiaries or expanding the contribution base.[17]

Finally, it also would not have been fair to throw this burden on the miners and their families who, according to the Coal Commission, Congress, and the Executive Branch, had received promises of lifetime health care benefits.

Accordingly, Congress and the Executive Branch had a rational basis in adopting "pay-for-your-own" as the principle underlying the Coal Act; substantive due process affords no basis for invalidating the Coal Act.

2. The Takings Clause Does Not Compel Invalidating The Coal Act—The Takings Clause, which also has been invoked as a reason to strike down the Coal Act, cannot reasonably be considered an impediment to the solution reached by Congress. The Takings Clause does not grant employers a right to avoid liability for a burden relating to the employment relationship, leaving it for others to bear, simply because the employment relationship has ended. The Takings Clause does not prevent the government from adjusting the burdens and benefits of economic life by enacting cost spreading legislation. "Congress routinely creates burdens for some that directly benefit others"

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[17] Petitioner wholly ignores the fact, moreover, that, by participating in a multiemployer collective bargaining structure, employers become part of a collective program, with collective obligations. *See generally Brown v. Pro Football*, 116 S. Ct. 2116, 2122 (1996); *Concrete Pipe & Products*, 508 U.S. 602; *Connors v. Link Coal Co.*, 970 F.2d 902, 903 (D.C. Cir. 1992).

for valid legislative reasons. *Connolly v. Pension Benefit Guar. Corp.*, 475 U.S. 211, 223 (1986).

The Court has identified three factors that have "particular significance" in the Takings inquiry: "(1) the economic impact of the regulation on the claimant; (2) the extent to which the regulation has interfered with distinct investment-backed expectations; and (3) the character of the governmental action." *Connolly*, 475 U.S. at 224-225 (internal quotations omitted). Each of these factors, and all three considered together, demonstrate that Coal Act assessments do not constitute compensable takings under the Fifth Amendment.

First, as to the severity of the economic impact of the Coal Act, the liability assessed against a former employer under the Act rests "on the relationship between the employer," its employees, and the health benefit trust funds. *See Connolly*, 475 U.S. at 225. There are provisions in the Act that "moderate and mitigate the economic impact of an individual employer's liability" and ensure that the amount that a company is required to pay is in direct "proportion to its experience with the plan." *Connolly*, 475 U.S. at 225-26. For example, the Act places priority during the retiree assignment process on those employers who employed the miners for the longest, most recent period of time. 26 U.S.C. § 9706(a)(1). The Act also includes a provision that protects the right of companies to bring a civil action against another person or company "for responsibility for assigned premiums." 26 U.S.C. § 9706(f)(6). The fact that, after all these provisions are considered, an employer may still be required to pay some sum of money is a "necessary consequence" of the scheme, but does not amount to a taking. *Connolly*, 475 U.S. at 226.[18]

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[18] Petitioner "tries to shoehorn" its claim into the analysis applied in cases dealing with "permanent physical occupation or destruction of economically beneficial use of real property." *Concrete Pipe & Products*, 508 U.S. at 643. This Court's Takings deci-

Second, petitioner's own reasonable "investment-backed" expectations do not argue in favor of a contrary result. The history of the coal industry is marked by repeated government involvement with respect to health and safety. As the Coal Commission explicitly found, the federal imprint can be found throughout the Funds' existence, starting with the 1946 Krug-Lewis Agreement, and continuing through the government's intervention in coal strikes over health care. Thus, at no point was it "reasonable [for a coal operator] to expect to be held no more accountable than society at large for the health care of its retired coal miners." *In re Chateaugay*, 53 F.3d 478, 495-96 (2d Cir. 1995).

Third, as to the character of the governmental action, the Takings Clause does not bar Congress from adjusting the "benefits and burdens of economic life to promote the common good." *Connolly*, 475 U.S. at 225 (citing cases). Here Congress acted to protect the financial stability of the health benefit trust fund that was promised to coal miners by requiring former employers of those retirees "to fund its share" of the plan obligations incurred during its association with the plan. *Id.* With regard to the Takings Clause, this Court repeatedly has recognized Congress' broad authority concerning economic regulation. In *Usery*,

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sions, however, regularly have upheld complex economic regulations analogous to that at issue here, such as the Multiemployer Pension Plan Amendments Act of 1980 and the Coal Mine Health and Safety Act of 1969. *See Connolly*, 475 U.S. 211; *Hodel v. Virginia Surface Mining & Reclamation Ass'n, Inc.*, 452 U.S. 264 (1981). As the Court has observed, "[i]t is well settled that a 'taking' may more readily be found when the interference with property can be characterized as a physical invasion by government, than when interference arises from some public program adjusting the benefits and burdens of economic life to promote the common good." *Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470, 488 n.18 (1987) (citations omitted). As with other economic statutes that the Court has upheld, the Coal Act permissibly safeguards the participants of the health care funds in order to "promote the common good." *Id.*

428 U.S. 1, for instance, this Court upheld the Black Lung Benefits Act of 1972, 30 U.S.C. § 901 *et seq.*, which required companies to compensate former employees whose employment relationship had terminated years before the statute was passed because those employers had benefited from their worker's labor during the period when the liability arose. Similarly, in *Connolly*, 475 U.S. 211, this Court upheld the pension plan withdrawal liability imposed by the Multiemployer Pension Plan Amendments Act of 1980, 29 U.S.C. §§ 1381-1461, even though it required financial contributions from employers who, just as in this case, argued that they had completed their contractual commitments prior to enactment and walked away from their employees' pension funds.

In sum, the Coal Act meets the tests of rationality and fairness that are imposed by the Due Process and Takings Clauses of the Constitution. Congress and the Executive Branch recognized that the coal industry retirees' health benefit funds were on the brink of collapse. After careful consideration, they adopted a "pay-for-your-own" principle to safeguard the financial viability of the health plans. Neither substantive due process nor the Takings Clause compels this Court to strike down Congress' legislative judgment.

II. EASTERN IS PARTICULARLY ILL-SUITED TO RAISE ITS CLAIM OF UNFAIRNESS

Eastern is particularly ill-suited to claim unfairness resulting from application of the Coal Act. Eastern presents itself as a company that has had no relationship—with the coal industry or the NBCWA agreements—since 1966, and, therefore, as a company that has been particularly victimized by the Coal Act. Pet. Br. 34-35, 46-49. Even if Eastern's self-characterization were accurate, it would not undermine the constitutionality of the Coal Act, or the fairness and rationality of its "pay-for-your-own" principle. But Eastern's attempted self-characterization is manifestly contrary to fact.

First, until it sold its subsidiary to third-party respondent Peabody Coal Company in 1987, Eastern continued to reap enormous profits from its corporate participation in the coal mining industry. In 1966, Eastern established a wholly-owned subsidiary, Eastern Associated Coal Company ("Eastern Associated"), and transferred its coal division to the new subsidiary. Eastern's wholly-owned subsidiary, Eastern Associated, earned millions of dollars from coal mining—and funneled those millions to its parent, petitioner Eastern—through the 1960's, 1970's and 1980's (until the sale in 1987). RA 2170-72, 2185.

Second, Eastern exercised direction and control over its subsidiary Eastern Associated throughout this period, *including Eastern Associated's participation in the BCOA and NBCWA agreements.* Top officers of Eastern Associated were *simultaneously* top officers of Eastern itself. Eastern Associated's President from 1970 to 1981, for example, simultaneously served as Senior Vice-President, and, later, Executive Vice President of Eastern.[19] This joint Eastern-Eastern Associated official served as President of Eastern Associated at the time of Eastern Associated's ratification of the 1971, 1974, and 1978 NBCWA's. Similarly, Eastern Associated's President in 1984 likewise simultaneously served as Senior-Vice President at petitioner Eastern itself, during the period when Eastern Associated ratified the 1984 NBCWA.[20]

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[19] In 1970, Eastern named Robert H. Freeman President of Eastern Associated, and appointed him to serve concurrently as Senior Vice President of Eastern itself, as well as a member of the Board of Trustees of Eastern. *Business Wire*, July 25, 1985, *available in* LEXIS, News Library, BWIRE File. In 1977, Eastern named Mr. Freeman, who continued to serve as President of Eastern Associated, to act simultaneously as Executive Vice President and Chief Operating Officer of Eastern. See *Wall Street Journal*, July 24, 1977, at 21. He retained his dual role—simultaneously acting as a top officer of petitioner and petitioner's subsidiary—until 1981. *Coal*, April 1981, at 200.

[20] Starting in 1984, John H. Hancock served both as President of Eastern Associated and as Senior Vice President in charge of coal operations at Eastern. *The Financial Times*, June 19, 1984, at 33.

Indeed, Eastern and Eastern Associated—the parent and the wholly-owned subsidiary—revealed a remarkable display of integration in their coal operations. Eastern, for example, frequently trumpeted its subsidiary's business operations—announcing, for example, that its subsidiary had purchased a coal mine interest.[21]

Accordingly, at a time when Eastern Associated was subject to the control and direction of Eastern, Eastern's wholly-owned subsidiary was a member of the BCOA and a signatory to the 1971, 1974, 1978, 1981, and 1984 NBCWA's. Any suggestion that Eastern was a stranger to developments in the coal industry, including the NBCWA's, in the 1970's and 1980's—and that it was not intimately involved in those developments—is preposterous. Reaping the benefits of its coal subsidiary's mining, and directing its coal subsidiary's affairs at a time when its subsidiary was a signatory to NBCWA's and participating in the BCOA, Eastern is particularly unsuited to claim unfairness on the ground that it had left the field in 1966 and washed its hands of coal industry developments.[22]

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[21] *Business Wire*, July 10, 1984 (Eastern announces acquisition by Eastern Associated of NuEast Mining Corp.), *available in* LEXIS, News Library, BWIRE File; *see also id.* January 31, 1984 (Eastern announces Eastern Associated's entry into mineral lease and coal purchase agreements); *id.* July 22, 1985 (Eastern announces appointment of Walter Mueller, Jr., as Executive Vice President at Eastern Associated); *Coal*, April 1981, at 200 (Eastern "named Ronald E. Sieling as president of its largest subsidiary, [Eastern Associated].").

[22] Eastern also remains a highly profitable company, with earnings from continuing operations of $53.8 million in 1995 and $60.7 million in 1996, even after providing for potential Coal Act liabilities. Eastern Enterprises, 1996 Annual Report 1 (1996). Eastern's company-specific challenge thus clearly does not present a situation, like that claimed in conclusory statements in some *amicus* briefs, in which it is asserted that the Coal Act threatens insolvency. With-

As on its general claims on substantive due process and the Takings Clause, petitioner falls far short in attempting to establish that it is a particular victim of unfairness. Its own wholly-owned subsidiary participated in the very events to which it claims to be a stranger; and its wholly-owned subsidiary generated millions of dollars for petitioner from precisely that activity. Petitioner thus is particularly ill-suited to be raising its claims of unfairness.

CONCLUSION

The Coal Act was enacted to stabilize the financing of a health care system that had been promised to coal miners. In responding to the looming financial disaster, Congress crafted a rational and fair solution, based on the "pay-for-your-own" principle. Nothing in substantive due process or the Takings Clause compels the judicial invalidation of this legislation.

The judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

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out conceding the accuracy of those assertions, *amicus* BCOA is confident of the Coal Act's constitutionality; it is indisputable, however, that petitioner Eastern does not remotely present such an insolvency claim, and such a situation is not before the Court in this case.